

Federal Communications Commission

DA 01-1859

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 Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of

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)
 Amendment of Section 73.202(b),)
 Table of Allotments,)
 FM Broadcast Stations.)
 (Old Fort, Fletcher, and Asheville,)
 North Carolina; and Surgoinsville, Tennessee;)
 and Augusta, Georgia))

MM Docket No. 01-175 /
 RM-10197

NOTICE OF PROPOSED RULE MAKING

Adopted: July 25, 2001

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Released: August 3, 2001

Comment Date: September 24, 2001

Reply Comment Date: October 9, 2001

By the Chief, Allocations Branch:

1. The Commission has before it a petition for rule making filed jointly by Dolphin Communications, licensee of Station WQNQ-FM, Old Fort, North Carolina, Clear Channel Broadcasting Licenses, Inc. licensee of WBBQ-FM, Augusta, Georgia, and Capstar TX Limited Partnership, licensee of WKSF(FM) Asheville, North Carolina ("petitioners"), proposing the reallocation of Channel 282A from Old Fort to Fletcher, North Carolina, and the modification of Station WQNQ-FM's license accordingly.¹ To accommodate the reallocation, petitioners also propose (a) the reallocation of Channel 260C from Asheville to Old Fort, North Carolina, and the modification of Station WKSF(FM)'s license accordingly; (b) the modification of the transmitter site of Station WEYE-FM, Channel 282A, Surgoinsville, Tennessee; and (c) the modification of the transmitter site of Station WBBQ-FM, Channel 282C, Augusta, Georgia. Petitioners state their intention to apply for the respective channels, if reallocated.

2. The proposal is filed pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without

¹ Clear Channel Broadcasting Licenses, Inc. and Capstar TX Limited Partnership are affiliated companies. The present corporation holds an option to purchase WQNQ-FM and therefore will implement the changes proposed herein.

affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioners state that Fletcher is an incorporated town located in Henderson County and has a 2000 U.S. Census population of 4,185 persons. Fletcher has a mayor/town council form of government run by an elected mayor and a four-member elected town council. It also has a number of town departments, boards, commissions and committees comprised of town residents, such as Administration Department, Parks and Recreation Commission, Planning Board and Zoning Board of Adjustment. Fletcher has its own zip code (28732), and a post office. There are over 140 businesses located within the town of Fletcher.

A substantial number of these businesses identify with the community by using "Fletcher" in their name, e.g., Fletcher A-1 tire, Inc., Fletcher Feeding Services, Inc., Fletcher Motor Company, Inc., Fletcher Plaza Barber Shop, Fletcher Cleaners, Fletcher Hair Design, Fletcher Lamp Post and Fletcher Insurance. There are several health care providers located in Fletcher, e.g., Parkridge and Pardee Hospitals maintain professional office buildings, and veterinary services may be obtained from Dr. Martin's Veterinary Hospital. Fletcher has two main parks—Fletcher Community Park and Kate's Park. The town has many churches and religious organizations, such as Fletcher First Baptist Church, Fletcher First Methodist Church, Fletcher Russian Orthodox Church, Fletcher United Methodist Church, and Calvary Episcopal Church. There are some civic and service organizations in Fletcher, including Kiwanis Club of Fletcher, the Book Lovers Club, Rotary Club and Boys and Girls Scouts.

3. We believe that soliciting comments on the proposal warrants consideration, since it could provide Fletcher with its first local aural transmission service, without depriving Old Fort of its sole local service, since Channel 260C is proposed herein as a replacement service. Likewise, the reallocation of Channel 260C to Old Fort will not deprive Asheville (population 68,889) of its sole local service, whereas Stations WCQS (NCE-FM), WLFA (NCE-FM), WSKY(AM), WISE(AM), WWNC(AM), and WKJV(AM) will remain licensed to the community. Since Station WQNC-FM seeks to relocate its transmitter site, a gain and loss area study is required and has been provided. Moreover, since Fletcher is located within the Asheville North Carolina Urbanized Area and the 70 dBu signal will cover 87% of that Urbanized Area, petitioners have provided the required Tuck analysis.² Even though Old Fort is located outside the Asheville Urbanized Area, the reallocation of Channel 260C from Asheville to Old Fort will continue to place a 70 dBu signal over 100% of the Asheville Urbanized Area. However, since Station WKSF(FM) is not relocating its transmitter site, neither a Tuck analysis nor a gain and loss area study is necessary. The reallocation of Channel 282A to Fletcher will provide a first local service (priority 3), and is consistent with the provisions set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).³ However,

² See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

³ The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

petitioners should demonstrate the overall public interest benefits that would be derived by the reallocations.

4. We note that the reallocation of Channel 282A to Fletcher, North Carolina and the reallocation of Channel 260C to Old Fort, North Carolina, require that Station WEYE-FM at Surgoinsville, Tennessee and Station WBBQ-FM at Augusta, Georgia, change their transmitter sites. Both Stations WEYE-FM and WBBQ-FM (licensee is a party herein) have consented to change their transmitter sites. The Commission allows a station to change its community of license despite the presence of "grandfathered" short-spacings and those permitted under Section 73.215 of the Commission's Rules. See Newnan and Peachtree City, Georgia, 7 FCC Rcd 6307 (1992) ("grandfathered" short-spacing); and Killeen and Cedar Park, Texas, 13 FCC Rcd 18790 (1998) (Section 73.215 short-spacing). Consistent with that policy, petitioners advise that Station WKSF(FM) is a currently short-spaced to Station WNNX(FM) in Atlanta, Georgia and Station WRFX(FM) in Kannapolis, North Carolina. However, since Station WKSF(FM) does not seek to change its transmitter site, the preexisting short-spacings will not be exacerbated by the reallocation of Channel 260C at Old Fort as a replacement service. Moreover, petitioners state their willingness to reimburse Trent Broadcasting, L.L.C., licensee of Station WEYE-FM, for expenses incurred in connection with changing its transmitter site, and have advised that they have entered into a reimbursement agreement with Station WEYE-FM to do so.

Technical Summary

5. An engineering analysis has determined that Channel 282A can be reallocated to Fletcher in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioners' requested site.⁴ To accommodate the reallocation, the reference coordinates for Channel 282A at Surgoinsville can be modified at petitioners' requested site; and the reference coordinates for Channel 282C at Augusta, Georgia, can be modified at petitioners' requested site.⁵ Additionally, Channel 260C can be reallocated to Old Fort at Station WKSF(FM)'s presently licensed site.⁶ In accordance with the provisions of Section 1.420(i) of the

⁴ The reference coordinates for Channel 282A at Fletcher are 35-32-28 North Latitude and 82-32-32 West Longitude.

⁵ The modified reference coordinates for Channel 282A at Surgoinsville are 36-33-11 North Latitude and 82-51-23 West Longitude.

The modified reference coordinates for Channel 282C at Augusta are 33-34-24 North Latitude and 81-54-17 West Longitude.

⁶ The reference coordinates for Channel 260C at Old Fort are 35-25-32 North Latitude and 82-45-25 West Longitude.

Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 282A at Fletcher, North Carolina, or Channel 260C at Old Fort, North Carolina.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Old Fort, North Carolina	282A	260C
Fletcher, North Carolina	---	282A
Asheville, North Carolina	260C	---

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before September 24, 2001, and reply comments on or before October 9, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultants, as follows:

Mark N Lipp, Esq.
J. Thomas Nolin, Esq.
Shook, Hardy & Bacon
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004
(Counsel for Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b),

73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. IT IS ORDERED, That the Secretary Shall Send, by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

Trent Broadcasting, LLC
126 Main Street
Church Hill, Tennessee 37642
(Licensee of Station WEYE-FM)

11. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 12th Street, S.W., Washington, D.C.